

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS NOS. 2856 of 1999 to 2867 of 1999
with
FIRST APPEALS NOS. 2868 OF 1999 TO 2894 OF 1999
with
FIRST APPEAL NO. 2896 OF 1999
WITH
FIRST APPEALS NOS. 2897 OF 1999 TO 2903 OF 1999
WITH
FIRST APPEALS NOS. 2905 OF 1999 TO 2907 OF 1999
WITH
FIRST APPEALS NOS. 2910 OF 1999 AND 2911 OF 1999
WITH
FIRST APPEALS NOS. 2913 AND 2914 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DUDA LAKHMAN

Appearance:

Mr.V.M.Pancholi, AGP, for the appellants.

MR KL DAVE for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and

Date of decision: 08/08/2000

C.A.V. Judgment: (per: Kadri, J.)

1. Appellants have filed this group of appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated November 25, 1988 passed by learned Joint District Judge, Junagadh, in Land Reference Cases Nos. 538 of 1988 to 576 of 1988; 578 of 1988; 579 of 1988 to 594 of 1988; 350 of 1988 and 351 of 1988. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Agricultural lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada, Taluka: Una, District: Junagadh, were placed under acquisition for public purpose of 'Machhundri Irrigation Scheme', by issuance of notifications under Section 4(1) of the Act, which were published in the Government Gazette on December 12, 1985, August 22, 1985, December 12, 1985, June 5, 1986, May 8, 1987, June 4, 1987 and July 2, 1987. After following the usual procedure under the Act, the Land Acquisition Officer, on the b.R

made awards, details of which are as under:

Date Name of Price Price
of village per Are for per Are for
Award Non-Irrigated irrigated
land land

(1) (2) (3) (4)

25.11.1986 Gundala Rs.70 Rs.100

17.8.1987 Bhacha Rs.80 Rs.120

24.9.1987 Men Rs.70 Rs.100

25.2.1988 Men Rs.70 Rs.100

31.5.1988 Chanchakwad Rs.80 Rs.120

31.5.1988 Gir Gadhada Rs.140 Rs.180

The claimants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate

and, therefore, they filed reference applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Junagadh, for determination of market value of acquired lands. Accordingly, the said applications were referred to the District Court, wherein, they came to be numbered as Land Reference Cases Nos. 538 of 1988 to 576 of 1988; 578 of 1988; 579 of 1988 to 594 of 1988; 350 of 1988 and 351 of 1988. Before the Reference Court, the claimants had claimed compensation of acquired lands of both the villages at the rate of Rs.1500/- per Are. The appellants contested the reference applications filed by the claimants, inter alia, contending that the compensation offered by the Land Acquisition Officer was just and adequate; that, the Land Acquisition Officer had taken into consideration situation and fertility of acquired lands and had also considered prevailing price of acquired lands while offering compensation; that, compensation claimed by the respondents was highly excessive and the reference applications be dismissed.

3. To substantiate their claim of enhanced compensation, claimant Narain Dudha of village Men was examined at Exh.24; claimant Allarrakha was examined at Exh.20; claimant, Dudha Laxman of village Chanchakwad was examined at Exh.11, claimant, Lakha Deshabhai of village Gir Gadhada was examined at Exh.9; claimant Vira Puja of village Bhacha was examined at Exh.62, claimant Lab Shanker Joshi of village Bhacha was examined at Exh.63 and Ghagwan Giga of village Bhacha was examined at Exh.44. On behalf of appellant, Deputy Mamlatdar, Bhupatlal Jamnadas Chaniyara was examined at Exh.36.

4. The claimants before the Reference Court deposed that their lands, which were placed under acquisition, were fertile and they were getting yearly income of Rs.30,000/- out of sale of agricultural produces raised on acquired lands. The claimants, during their deposition, produced previous award rendered in Land Reference Case No.205 of 1991 in respect of acquired lands of village Kodiya at Exh.41. Agricultural lands of village Kodiya were placed under acquisition by notification under section 4(1) of the Act issued on February 6, 1978, and the Reference Court had determined market value at the rate of Rs.650/- per Are for irrigated lands and Rs.495/- per Are for non-irrigated land. The Reference Court, for the purpose of determination of market value of present acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada, placed reliance on previous

award Exh.41 rendered in Land Acquisition Case No.205 of 1991, which was in respect of acquired lands of village Kodiya. As notification under Section 4 of the Act in respect of acquired lands of village Kodiya covered under previous award Exh.41 was issued in the year 1978, the Reference Court gave price rise of 10% per year and determined market value of present acquired lands at the rate of Rs.1122/- per Are for irrigated lands and Rs.842/- per Are for non-irrigated lands. The Reference Court also extended statutory benefits under Sections 23(1-A) and 23(2) and interest as per the amended provision of Section 28 of the Act, which has given rise to filing of these appeals.

5. Learned Assistant Government Pleader, V.M.Pancholi and learned advocate Mr. K.L. Dave have taken us through the entire record and proceedings of the Reference Court.

6. Learned Assistant Government Pleader for the appellants has vehemently submitted that villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada were situated at a distance of about 6 to 7 kms. from village Kodiya and, therefore, the Reference Court had erred in placing reliance on previous award Exh.41 rendered in Land Acquisition Case No.205 of 1991. Learned counsel for the appellant has further submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of acquired lands of the aforesaid villages. It is further stressed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.1122/- per Are for irrigated lands at Rs.842/- per Are for non-irrigated lands and, therefore, the impugned awards should be quashed and set aside and the appeals be allowed.

7. Mr. K.L. Dave, learned counsel for the claimants, submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is comparable as well as relevant for the purpose of determining market value of the lands acquired from villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on the said award Exh.41 for the purpose of determining market value of the lands acquired in this case. What was asserted was

that a just award has been passed by the Reference Court determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed.

8. We have heard learned counsel for the parties at length. We have gone through the record and proceedings as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

9. In our opinion, submission of learned Assistant Government Pleader for the appellants that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of acquired lands of both the villages, Fatsar and Vadviyala, does not deserve any merit. Previous award Exh.41 rendered in Land Acquisition Case No.205 of 1991 was confirmed by Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 27, 1999, wherein, market value of acquired lands of village Kodiya as on February 6, 1978, determined by the Reference Court at the rate of Rs.650/- per Are for irrigated land and Rs.495 per Are for non-irrigated lands, was confirmed. Therefore, previous award Exh.41 rendered in Land Reference Case No.205 of 1991 had become final. The claimants had led sufficient evidence to establish that the lands of village Kodiya were in all respects relevant and comparable and having same fertility as compared to acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of village Kodiya which were previously acquired. When comparable sale deeds of the same village or nearby villages were not available, which had taken place in near proximity of time of issuance of notification of present acquired lands, the Reference Court had not committed any error in placing reliance on previous award Exh.41 which had become final, when acquired lands of previous award were comparable with the present acquired lands. Section 4 notification of previous award Exh.41 was published on February 6, 1978, whereas Section 4 notifications of present acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada were published on December 12, 1985, August 22, 1985, December 12, 1985,

June 5, 1986, May 8, 1987, June 4, 1987 and July 2, 1987. The claimants had established that lands of the aforesaid villages were having same fertility and the agriculturists were raising similar crops every year. Even the crop pattern was also similar. The Reference Court was justified in giving price rise of 10% every year for the purpose of determination of market value of present acquired lands as on 1985, 1986 and 1987.

10. The main anxiety of the authority or Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S.23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired should get fair and just amount of compensation. In the present case, the claimants had led sufficient evidence that acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada were similar in fertility and the agriculturists were raising similar crops. The claimants also established by oral evidence that previous award Exh.41, which was in respect of acquired lands of village Kodiya, was also relevant and comparable for the purpose of determination of market price of present acquired lands. The claimants had also established that acquired lands of village Kodiya and present acquired lands of each village were similar in fertility and having the same advantageous features. In our view, the Reference Court had rightly adopted a method for determining market value of present acquired lands on the basis of previous award Exh.41 in respect of acquired lands of village Kodiya. When no other reliable evidence was available, the approach of the Reference Court in adopting and accepting the method of placing reliance on previous award Exh.41 is quite just and correct in the facts and circumstances of the present case.

11. It may also be stated that the Division Bench of this Court (Coram: M.R. Calla & P.K. Sarkar, JJ.) by judgment and order dated December 24, 1999 rendered in First Appeals Nos.3217 of 1999 to 3232 of 1999, determined market value of acquired lands of villages Vadviyala, Khapat, Gir Gadhada and Jargali, Taluka: Una, for the lands acquired in the year 1986 and 1987 at the rate of Rs.703/- per Are for jirayat land and Rs.937/- per Are for bagayat land. Acquired lands of above village were also relevant and comparable and were

having same fertility of the present acquired lands. It was not brought to our notice that determination of market value of above villages by the Division Benches of this Court was challenged in the higher forum. Notifications of present acquired lands were issued in near proximity of time if compared with notifications issued in respect of acquired lands which were subject matter before Division Bench of this Court in First Appeals Nos.3197 of 1999 to 3257 of 1999. When no sale deed was available, the Reference Court was justified in placing reliance on previous award Exh.41 which was confirmed by Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 27, 1999 rendered in First Appeal No.1320 of 1999 which was in respect of acquired lands of village Kodiya. Record of present appeals indicates that lands of surrounding villages which were acquired for public purpose of 'Machhundra Irrigation Scheme' were having similar fertility and the agriculturists of those villages were raising similar crops. In our view, determination of market value by the Division Bench of this Court in First Appeal No.3197 of 1999 and allied first appeals, would provide good guidance for the purpose of determination of market value of present acquired lands. Therefore, we treat all acquired lands as having similar fertility and adjoining to each other. We, therefore, determine market value of present acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada at the rate of Rs.703/- per Are for jirayat land and Rs.937/- per Are for bagayat land. Hence, market value of present acquired lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada, determined by the Reference Court, at the rate of Rs.842/- per Are for jirayat land and Rs.1122/- per Are for bagayat land is required to be quashed and set aside and the award is required to be modified.

12. As a result of foregoing discussion, these First Appeals are partly allowed. Market value of acquired bagayat lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada is determined at the rate of Rs.937/- per Are as on 1985, 1986 and 1987. Market value of acquired jirayat lands of villages Chanchakwad, Men, Gundala, Bhacha, and Gir Gadhada is determined at the rate of Rs.703/- per Are as on 1985, 1986 and 1987. Statutory benefit extended under Section 23(1-A) and 23(2) and interest as per the amended provision of Section 28 of the Act is eminently just and proper and does not call for any interference. However, it is clarified that the claimants would not be entitled to interest on the amount of solatium as well as on the

amount awarded under Section 23(1-A) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(M.H. Kadri, J.)

(D.P.Buch, J.)

(swamy)